

2002 PROPOSED AMENDMENT TO THE HAWAII STATE CONSTITUTION**QUESTION #3: INITIATION OF FELONY PROSECUTIONS
BY WRITTEN INFORMATION**

CONSTITUTIONAL QUESTION	"Shall Hawaii's constitutional provision regarding the initiation of criminal charges be amended to permit criminal charges for felonies to be initiated by a legal prosecuting officer through the filing of a signed, written information setting forth the charge in accordance with procedures and conditions to be provided by the state legislature?"
BACKGROUND	<p>Article I, section 10, of the State Constitution requires that felony prosecutions be initiated in two ways: (1) by grand jury indictment or (2) upon the filing of a complaint following a preliminary hearing. Hearsay testimony is not allowed and probable cause must be established through the testimony of witnesses.</p> <p>This measure proposes to amend the Constitution to allow a third method of initiating a felony prosecution. This third method will allow the initiation of felony prosecutions by written information. This involves the submission to the court of a document, also known as a "written information," that is similar to a complaint and that is supported by affidavits and other documentary evidence. If a judge finds probable cause based upon the written information, a warrant is issued and the case proceeds to trial. This method of initiating a felony prosecution is being used in ten other states.</p>
EXPLANATION OF PROPOSED AMENDMENT	The proposed amendment permits prosecutors and the Attorney General to initiate felony criminal charges by filing a written information signed by the prosecutor or the Attorney General setting forth the charge, in accordance with procedures and conditions to be provided by the State Legislature. The method of filing criminal felony charges through a written information will be in addition to the existing methods of grand jury indictments and preliminary hearings.
MEANING OF A "YES" VOTE	A "yes" vote means that felony prosecutions may be initiated by use of a written information, in addition to grand jury indictments and preliminary hearings.
MEANING OF A "NO" VOTE	A "no" vote means that felony prosecutions may be initiated only by grand jury indictments or preliminary hearings, not by use of a written information.

MEANING OF A "BLANK" VOTE	A "Blank" vote - a ballot that is not marked either "Yes" or "No" - is not counted as a "Yes" vote or a "No" vote. However, the Hawaii Supreme Court has determined that in calculating the "ballots cast upon a question" under the Hawaii Constitution, blank votes will be counted in determining whether the proposal was approved. Therefore, casting a "Blank" vote has the same effect as casting a "No" vote. Only a "Yes" vote will be counted as a ballot cast in the affirmative on the question.
PROS AND CONS	<p><i>Pros:</i></p> <p>The present law that requires all felony prosecutions to be initiated by grand jury indictment or complaint following preliminary hearing is very cumbersome and is very expensive to the State and counties. If we allow felony prosecutions to be initiated by written information, it will result in cost savings to the State and counties. We will still have necessary safeguards for the accused because probable cause will still be required to support the issuance of a warrant, and a finding of probable cause will be subject to challenge in a hearing. Crime victims will not be required to testify at both preliminary proceedings as well as at trial. Because prosecutions will be initiated in a more timely fashion, cases will proceed more quickly to trial. This measure balances between protection of the rights of the accused and efficiency of the criminal justice system by continuing to ensure a defendant's constitutional rights while preserving scarce state resources.</p> <p><i>Cons:</i></p> <p>This measure will eliminate important procedural protections for accused citizens in the grand jury and preliminary hearing systems. If we allow felony prosecutions by written information, then felony prosecution can be started by the prosecutor solely on uncontested documents. This will increase the prosecutor's power dramatically at the expense of important and established citizens' rights. This measure will also shift the burden of proof to the defense to disprove probable cause and will violate the right of the accused person to confront witnesses against the accused. The use of a written information to initiate felony prosecutions leaves too much discretion to law enforcement officers. It will surrender the constitutional protections and guarantees that were designed to protect against abuses of power. Further, this measure will not result in substantial cost savings to the State, because the criminal defense attorneys will file motions to dismiss the information challenging the probable cause determination. This will burden the courts with hundreds of preliminary hearing type proceedings.</p>

08/05/02